

BEFORE THE THREE PERSON DUE PROCESS HEARING PANEL  
EMPOWERED BY THE MISSOURI STATE BOARD OF EDUCATION  
PURSUANT TO SECTION 162.961 RSMo.

,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
WAYNESVILLE R-VI SCHOOL DISTRICT,	)	
	)	
Respondent.	)	

**MEMORANDUM AND ORDER**

Currently pending before the hearing panel is Respondent Waynesville R-VI School District's ("District") Motion to Dismiss or for Summary Judgment. In its Motion, the District argued that Petitioner has failed to state a claim justiciable in an IDEA due process hearing and that if any viable claims had been stated, they are moot now. Petitioner filed an Answer to the Motion.

is a child with a disability as defined by the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* Under the IDEA, all children with disabilities are entitled to a free appropriate public education ("FAPE") designed to meet their unique needs. 20 U.S.C. §§ 1412(a)(1); 1401(8). Significantly, the IDEA does not prescribe any substantive standard regarding the level of education to be accorded to children with disabilities. *Board of Education of the Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 189, 195 (1982). Rather, a local educational agency ("LEA") fulfills the requirement of FAPE "by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." *Id.* at 203. As stated by the *Rowley* Court, an appropriate educational program is one that is "reasonably calculated to enable the child to receive educational benefits." *Id.* at 207; *Gill v. Columbia 93 Sch. Dist.* 217 F.3d 1027, 1035-36 (8<sup>th</sup> Cir. 2000); *Reese v. Board of Educ. of Bismarck R-V Sch. Dist.*, 2002 U.S. Dist. LEXIS 19171 (E.D. Mo. Sept. 30, 2002).

Although lives within the East Elementary School attendance area, she attended Thayer Elementary School during the 2001-02 through 2003-2004 school years. attended Thayer based on a District policy that allows a parent to request a transfer of a student to another school. The policy applies to children with disabilities and nondisabled children alike. Although the Request for Student Transfer submitted by Petitioner suggests that medical issues may have been a reason for the parents' request for a transfer, nothing in the record shows that 's IEP team found that attendance at Thayer was necessary for to receive FAPE.

One condition placed on student transfers by the District's policy is that parents provide appropriate transportation. The policy provides that a transfer may be revoked if a student's attendance becomes irregular due to the loss of transportation or if students are not dropped off or picked up according to school rules. By a letter dated March 2, 2004, the District advised 's mother, , that 's transfer to Thayer was revoked and that her school of attendance as of March 4, 2004, would be East Elementary School. Petitioner did not dispute the District's assertion that the revocation was based on problems with transportation and compliance with school procedures. Nothing in the record is contrary to the District's assertion that the decision to revoke the transfer was an administrative decision. It is undisputed that ultimately was not required to attend East Elementary.

On March 31, 2004, the chairperson conducted a telephone conference with Ms. and the District's counsel. The discussion was memorialized in a letter from the chairperson to Ms. dated March 31, 2004. In the letter the chairperson advised Ms. , "if I have omitted anything or if you wish to further specify the issues involved or the remedy you seek, please do so." During a telephone conference on April 16, 2004, Ms. stated that she had no changes that she wished to make to the letter or other specifications. The March 31 letter stated, "[y]ou stated that your sole issue is in regard to the principal and her decision to change the location of your daughter's

education.” The letter also states, “the remedy you want is for the principal to be reprimanded.” Petitioner has not specified any way in which the District allegedly failed to provide FAPE.

Although the IDEA provides a means for parents to voice their dissatisfaction with certain aspects of their child’s education, it strictly limits the matters that may be addressed in a due process hearing to situations “relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” 20 U.S.C. § 1415(b)(6). Because the IDEA limits the scope of due process hearings to those four enumerated areas, a parent may not seek an IDEA due process hearing with respect to any other matters relating to the child’s education.

The statement by Petitioner that her sole issue relates to a decision by the principal to change the location of her daughter’s education fails to state a claim related to one of the four areas that may be addressed by an IDEA due process hearing panel. Decisions interpreting the IDEA routinely distinguish between changes of educational placement that must be made through the IEP process and changes of location that can be made administratively without invoking IDEA procedures. *See, e.g., Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 830, 834 (8<sup>th</sup> Cir. 2003) (noting that a transfer to a different school building for reasons unrelated to the child are generally not considered a change of placement); *Cavanagh v. Grasmick*, 75 F. Supp.2d 446 (D. Md. 1999); *Mobile County Bd. of Educ.*, 25 IDELR 804 (SEA Alabama 1999); *Letter to Fisher*, 21 IDELR 992. As the decisions reflect, a change of location of services is not within the limited scope of matters to be addressed in an IDEA due process hearing absent allegations that the change constitutes a change of placement or impacts the provision of FAPE. Petitioner has not raised such claims.

The remedy requested by Petitioner further shows that her complaints do not arise under the IDEA. Reprimanding principals for allegedly providing false information to school boards or

improperly transferring students is not within the authority of IDEA due process hearing panels. The sole issue raised by Petitioner is not justiciable in an IDEA due process hearing.

As the District contended in its Motion, there is an additional reason for dismissing the due process request. Even if Petitioner had stated a viable claim, it is moot now. As Petitioner acknowledged, continued to attend Thayer Elementary, the school she preferred. Petitioner also acknowledged that she was satisfied with the school and did not have any disagreement with her daughter's teachers. Given these circumstances, there is no current controversy between Petitioner and the District for the hearing panel to address. *See McCarthy v. Ozark Sch. Dist.*, 359 F.3d 1029, 1035 (8<sup>th</sup> Cir. 2004) (noting, "[w]e do not have jurisdiction over cases in which 'due to the passage of time or a change in circumstances, the issues presented ... will no longer be 'live' or the parties will no longer have a legally cognizable interest in the outcome of the litigation' ").

Accordingly,

IT IS HEREBY ORDERED that the District's Motion to Dismiss or for Summary Judgment is granted and Petitioner's request for a due process hearing is dismissed with prejudice.

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Michael H. Finkelstein  
Chairperson

\_\_\_\_\_, 2004

#### **APPEAL PROCEDURE**

PLEASE TAKE NOTICE that this Memorandum and Order constitutes the final decision of the Department of Elementary and Secondary Education in this matter and that you have the right to

request review of this decision pursuant to the Missouri Administrative Procedures Act, § 536.010 *et seq.* RSMo.

PLEASE TAKE NOTICE that you the right to file a civil action in federal or state court pursuant to the IDEA. *See* 34 C.F.R. § 300.512.